OFFICE OF THE DEPUTY JUDGE PRESIDENT

(HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, JOHANNESBURG)
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N O T I C E

TO:

1. **Judges of the Gauteng Division, Johannesburg**
2. **Chief Registrar, Gauteng Division, Johannesburg**
3. **Secretariat – Judicial Case Flow Management, Office of the Chief Justice**
4. **Registrars – Gauteng Division of the High Court, Johannesburg**
5. **Legal Practice Council – Gauteng**
6. **Law Society of South Africa**
7. **Gauteng Family Law Forum**
8. **Gauteng Attorneys Association**
9. **Pretoria Attorneys Association**
10. **Johannesburg Attorneys Association**
11. **West Rand Attorneys Association**
12. **South African Black Women in Law**
13. **National Association of Democratic Lawyers**
14. **Black Lawyers Association**
15. **South African Women Lawyers Association**
16. **South African Medical Malpractice Lawyers Association**
17. **Personal Injury Plaintiff Lawyers Association**
18. **South African Medico-Legal Association**
19. **Office of the Director of Public Prosecutions, Pretoria and Johannesburg**
20. **Office of the State Attorneys, Pretoria and Johannesburg**
21. **Solicitor General**
22. **Office of the Family Advocate, Pretoria and Johannesburg**
23. **Legal Aid South Africa**
24. **Johannesburg Society of Advocates**
25. **Pretoria Society of Advocates**
26. **Gauteng Society of Advocates**

27. Tshwane Society of Advocates
28. Pan African Bar Association of South Africa
29. General Council of the Bar of South Africa
30. National Bar Council of South Africa
31. South African Bar Association
32. National Forum of Advocates
33. North Gauteng Association of Advocates
34. Church Square Association of Advocates
35. Advocates for Transformation
36. Legal Division of the Department of Health: Gauteng
37. Legal Division of the Department of Sport, Arts, Culture and Recreation
38. Gauteng Department of Agriculture and Rural Development
39. Legal Services - Gauteng Provincial Department of Education
40. South African Board of Sheriffs
41. South African Sheriff Society
42. Road Accident Fund

DATE : 10 March 2025

OUR REF : DJP/390/2024/lt

RE : **INTRODUCTION OF A PILOT DEDICATED INSOLVENCY COURT IN THE JOHANNESBURG HIGH COURT**

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1. After deliberations with specialist insolvency legal practitioners the decision has been taken to pilot a DEDICATED INSOLVENCY COURT. The objective is to divert all insolvency related applications, whether unopposed or opposed, from the present general unopposed motion roll, the general opposed motion roll and the urgent motion roll to the dedicated insolvency motion court (IMC).

2. The procedure also addresses actions which are instituted and matters that require to be referred to oral evidence in the Insolvency Trial Court (ITC). This procedure in the ITC is premised on similar, but not identical, policy objectives and procedures to that of the commercial court rules.

3. The policy objective is to give recognition to the commercial imperative of expedition in this field of legal practice by establishing procedures which can

afford quick turnaround lead times within the broad framework of the existing litigation model.

4. Arrangements are also made for a transitional period to cater for insolvency cases already enrolled, and to give reasonable notice to the legal profession of the innovations.

5. The new procedures shall take effect on 14 April 2025, i.e., the first day of term 2 of 2025. From that day attorneys may seek enrolments of cases categorised as INSOLVENCY. The responsibility to correctly categorise a case is that of the applicant's attorney and incorrectly described cases shall not find their way to that roll.

6. The first week in which hearings shall take place is week of 12 May 2025. Thus, there shall be a 4-week cycle from request for enrolment to the week of hearing. This rolling 4-week-cycle shall not include the recess periods.

7. It is important to take careful note that this 4- week-cycle should for nearly all matters eliminate the need to approach the dedicated insolvency court by way of urgency. Only an exceptional set of circumstances would justify approaching the dedicated insolvency court on a shorter notice period than the prescribed 4-weeks. Except during recess, the urgent motion court shall not under any circumstances entertain an insolvency case.

8. For obvious reasons strict adherence to the procedures shall be demanded in order to maintain coherence of exposition in papers filed, order in the organisation of the case-flow and appropriate opportunities for the judges rostered in this court to effectively prepare before a hearing. Because of the expected volume of caseload, abuse of the process cannot and shall not be tolerated.

9. Transitional arrangements to accommodate insolvency cases already set down in the opposed motion roll and unopposed motion roll in the second term of 2025 and later for the rest of 2025, are as follows:

9.1. From the week of 12 May 2025, when the dedicated insolvency court begins its hearings, all insolvency cases already enrolled on the opposed motion roll and on the unopposed motion roll shall be transferred to the dedicated insolvency roll in that week. Practitioners need not take any steps to effect this transfer which shall be automatic.

9.2. At the date of this directive, the general opposed motion is fully enrolled up to 3 November 2025. This lead time will, in all likelihood, further extend before the time for enrolments for the dedicated insolvency roll begins on 14 April 2025. The temptation will exist for practitioners to remove matters set down so far into the future in order to try to get an earlier slot on the dedicated insolvency roll. Practitioners are requested not to do so as the distinct risk exists of swamping the dedicated insolvency roll and making it fail for that reason.

10. The number of judges allocated to preside over this roll hall be determined by availability and the scale of the enrolments.

11. This pilot shall be evaluated again prior to incorporation into the consolidated practice manual of the Division which is currently a work-in-progress.

DIRECTIVE:
RULES FOR THE DEDICATED INSOLVENCY MOTION COURT (IMC) AND THE DEDICATED INSOLVENCY TRIAL COURT (ITC) IN THE JOHANNESBURG HIGH COURT

A: Insolvency Motion Court (IMC)

1. There shall be a dedicated Insolvency Motion Court (IMC) established with effect from Term 2 of 2025.

2. This court shall sit each week during term except the last week.

3. The function of this court shall be to hear all opposed and unopposed motions, including urgent applications, dealing with disputes in relation to insolvency or related disputes, including, but not limited to:
   3.1. sequestration proceedings;
   3.2. rehabilitation proceedings;
   3.3. liquidation proceedings;
   3.4. business rescue proceedings;
   3.5. the review of any decision or act of the Master of the High Court in relation to insolvency proceedings;
   3.6. review of any decision of any presiding officer, commissioner, or magistrate in proceedings under sections 65 and 152 of the Insolvency Act, 24 of 1936 and under sections 415, 416, 417 and/or 418 of the Companies Act, 61 of 1973);

3.7. the perfection of security such as under a notarial bond in the context of and/or in the contemplation of insolvency and/or business rescue proceedings; and

3.8. applications to extend powers of provisional liquidators and/or to convene insolvency enquiries under and in terms of the Insolvency Act, 24 of 1936 and the Companies Act, 61 of 1973.

3.9. exceptions in insolvency proceedings.

3.10. interlocutory matters related to an insolvency case, except cases for which the special interlocutory court (SIC) has been established; ie applications to secure compliance from a delinquent opponent of the performance of a procedural obligation that is due.

4. At the point of issue of the court process, all cases are routinely classified, and matters of the type enumerated above shall be classified by the applicant's attorney as one or other form of INSOLVENCY case, in the routine prescribed form required by the registrar. An error in classification by the attorney risks the case not finding its way to the correct roll and being struck from the incorrect roll.

5. Efforts to protract the preparatory stage of a case, such as the dilatory exchange of affidavits incommensurate with the urgency and exigencies of the matter, or efforts to delay the allocation of a hearing date or to delay or to postpone and/or delay the hearing of the matter shall expose a litigant and the practitioners to the risk of punitive costs being ordered. Practitioners are specifically referred to article 60.1 and 60.2 of the Code of Conduct for all practitioners, GN 168 of 29 March 2019, as amended.

6. At the point of requesting a date for enrolment these cases shall be streamed to the IMC by the registrar.

7. Unopposed motions shall be set down in the 4th week after the week in which a request for enrolment is uploaded. This directive prevails over the provisions in Directive 1 of 2024 regarding enrolment of unopposed applications.

8. Opposed matters shall be set down in the 4th week after the week in which the request for enrolment is uploaded. This directive prevails over the provisions in Directive 1 of 2024 regarding enrolment of opposed applications.

   8.1. Together with the request for enrolment:

      8.1.1. a detailed joint practice note must be delivered, identifying precisely what issues are in dispute and the decision that a court is required to make;

      8.1.2. heads of argument of all parties must be delivered;

9. Efforts by any party to procure a postponement of a hearing of the matter by a failure to collaborate with the other party or by some other cynical act of gamesmanship to prevent a matter being ripe for a hearing in the IMC shall not be tolerated. In particular: -

   9.1. in the event of one or more parties' being recalcitrant in co-operating or complying with these and such other requirements necessary for the expeditious enrolment and hearing of the matter, the aggrieved party may:

9.1.1. put the recalcitrant party on notice that it is delinquent and that a punitive costs order shall be sought, which may include an order precluding the recalcitrant party's legal representatives from charging a fee,

9.1.2. thereupon unilaterally seek a set down of the matter in the IMC, and file its readiness declaration, practice note and heads of argument.

10. Because of the 4-week cycle, it will be only in exceptional circumstances that a case is sufficiently urgent that it cannot await its turn in that 4-week cycle.

10.1. Matters believed to be sufficiently urgent that warrant a set down in the IMC earlier than on 4 weeks' notice, must satisfy the requirements usually required for enrolment in the general urgent motion court as prescribed in the Rules of Court and of Practice Directive 1 of 2024.

10.2. Furthermore, in relation to such urgent applications that cogently cannot await their turn in the 4-week cycle:

10.2.1. generally, only interim orders or rules nisi should be sought and granted urgently;

10.2.2. the papers filed shall be succinct as behoves the need to consider and decide a case on such urgency. Applications or opposing papers which are prolix and self-indulgent risk summary dismissal or removal from the roll and risk a punitive costs order, which may include an order precluding the recalcitrant party's legal representatives from charging a fee.

11. All matters shall, for formal purposes, be set down on the Monday of the week.

12. The presiding judge shall, upon receiving the roll in the third week before the week in which the cases are set down (i.e. 15 court days), notify the parties of the date and time the matters shall be heard, such notice to be dispatched in that third week (i.e. not later than 11 courts days before the set down date).

13. During the recess periods, matters believed to be so urgent that they cannot wait for a set-down date in term in the IMC must be referred to the senior judge in the general urgent motion court, who shall give directions as to whether the matter shall be heard during the recess in the general urgent court or referred to the registrar to enrol in the IMC in the next available week in term.

14. To the extent that:

    14.1. there is a dispute in the application proceedings that requires oral evidence or determination by trial, or,

    14.2. the affidavits and documents in the application are of such a volume and/or complexity that the application cannot practicably be heard in the IMC and therefore requires a special allocation (generally, matters that can be argued within a day by the IMC will not fall into this category and are to be determined by the IMC);

    then, the judge allocated to hear the matter in the IMC shall, after hearing submissions from the parties (where such submissions are, as may be directed

by the allocated judge, made in open court, in chambers, by way of a virtual case management meeting and/or by way of written submissions made before the hearing), give such directions as may be necessary to ensure that the matter is ripe for hearing so that it may be specially allocated by the DJP (whether before the same judge, in due course, or to another judge). The objective is that parties are to engage constructively with the allocated judge to advance the efficient determination of the matter, and that the appropriate directions are put in place by no later than the conclusion of the allocated judge's roll in the IMC for that week, and so facilitate the subsequent allocation of the matter by the DJP to the extent that the allocated judge cannot determine or otherwise dispose the matter on his or her IMC roll during that week.

15. Such directions by that judge shall include directions in relation to:

15.1. the exchange of further affidavits between the parties, including in relation to the intervention and/or joinder of any further parties and the exchange of any further heads of argument and practice notes, due regard being had to the caution against the deliberate protraction of proceedings;

15.2. the appropriate narrowing of and identification of issues that remain in dispute;

15.3. the *ad hoc* hearing of oral evidence by that judge in that week in the IMC, which would be particularly appropriate where a factual dispute is narrow and requires limited oral evidence;

15.4. to the extent that there is a factual dispute that requires determination by oral evidence that cannot be decided as provided for in the preceding sub-paragraph, the formulation of an appropriate *Metallurgical*-type order (see *Metallurgical and Commercial Consultants (Pty) Ltd v Metal Sales Co (Pty) Ltd* 1971 (2) SA 388 (W) at 396G – 397B)*;*

15.5. to the extent there is to be referral to trial, the formulation of an appropriate referral order including as to the role of the affidavits that have been delivered, particularly for purposes of narrowing the issues in dispute (regard being had to *inter alia Lekup Prop Co No 4 (Pty) Ltd v Wright* 2012 (5) SA 246 (SCA), paragraph 32).

16. All technical database requirements and procedures applicable to applications as set out in the Practice Directives and Practice Manual must be fully complied with.

17. The mode of hearing of cases or preliminary conferences with the judge shall be either physical or by video link at the discretion of the presiding judge.

B: Insolvency and related type actions

18. Parties to insolvency and related type actions, such as:

    18.1. actions for impeachment of dispositions;

    18.2. section 424 action proceedings in terms of the Companies Act, 1973;

    18.3. any other actions substantially related to an insolvency dispute,

    shall co-operate with each other to render the case ripe for allocation, whereupon they shall approach the Deputy Judge President, by way of a motivated request, for an allocation of a trial date as can be accommodated under prevailing circumstances as to availability of judges. As to ripeness for hearing, the parties must comply with the prevailing practice directives as to what is required for purposes of establishing whether an action is trial-ready, including the plaintiff's attorney making the prescribed statement to that effect.

19. The parties are also encouraged to make use of the directives relating to allocation of the matter as a Commercial Court matter.

Dictated by the Deputy Judge President
Electronically transmitted, therefore no signature

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ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT